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General Flooring Systems, Inc. and Resilient Floor and Decorative Covering Local Union No. 1247, International Brotherhood of Painters and Allied Trades, AFL-CIO. Case 31-CA-21365

March 22, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge filed by the Union on June 22, 1995, the General Counsel of the National Labor Relations Board issued a complaint on October 31, 1995, against General Flooring Systems, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. On December 6, 1995, the General Counsel issued an amendment to the complaint. Although properly served copies of the charge, complaint, and amendment, the Respondent failed to file an answer.

On February 13, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On February 15, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint and amendment affirmatively note that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 23, 1996, notified the Respondent that unless an answer were received by February 6, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Redlands, California, has been engaged in the construction industry in the installation of carpet and tile for general contractors. The Respondent annually purchases and receives at its Redlands, California facility goods or services valued in excess of \$50,000 directly from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All employees of the Respondent engaged in the installation of carpeting, tile and related products as more fully set forth in the 1993-1995 collective bargaining agreement with the Union.

Excluded: All other employees, guards and supervisors as defined in the Act.

Since at least January 20, 1995, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit employees and has been recognized as such representative by the Respondent. Such recognition was embodied in a collective-bargaining agreement which was effective by its terms for the period August 17, 1993, through August 4, 1995 (1993-1995 Agreement). At all times since January 20, 1995, based on Section 9(a) of the Act, the Union has been the exclusive representative of the unit. Alternatively, about January 20, 1995, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit by entering into a collective-bargaining agreement with the Union for the period August 17, 1993, to August 4, 1995, without regard to whether the majority status of the Union has ever been established under the provisions of Section 9 of the Act.

Since about January 20, 1995, the Respondent did refuse, and continues to refuse to bargain collectively with the Union as the exclusive collective-bargaining representative of all the employees in the unit by unilaterally changing the terms and conditions of employment including, but not limited to, the cessation of payments to various trust funds.

About March 30, 1995, the Respondent discharged its employee Carl Taylor and since that date has failed to reinstate him to his former position of employment. The Respondent engaged in this conduct because Taylor joined or assisted the Union or engaged in other protected concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By unilaterally changing the terms and conditions of employment, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

3. By discharging Carl Taylor and failing to reinstate him, the Respondent has discriminated and is discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) since about January 20, 1995, by unilaterally changing terms and conditions of employment including, inter alia, ceasing to make contractually required contributions to various trust funds, we shall order the Respondent to honor the terms of the 1993-1995 Agreement and to make whole its unit employees for any losses incurred as a result of its unilateral changes by, inter alia, making all delinquent contributions to the various trust funds, plus any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such

amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

Furthermore, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Carl Taylor, we shall order the Respondent to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra. The Respondent shall also be required to remove from its files any and all references to the unlawful discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, General Flooring Systems, Inc., Redlands, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Resilient Floor and Decorative Covering Local Union No. 1247, International Brotherhood of Painters and Allied Trades, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following unit by unilaterally changing the terms and conditions of employment including, but not limited to, cessation of payments to various trust funds:

Included: All employees of the Respondent engaged in the installation of carpeting, tile and related products as more fully set forth in the 1993-1995 collective bargaining agreement with the Union.

Excluded: All other employees, guards and supervisors as defined in the Act.

(b) Discharging employees or failing to reinstate them because they joined or assisted the Union or engaged in other protected concerted activities, or to discourage employees from engaging in these activities.

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of the 1993-1995 Agreement with the Union and make the unit employees whole for any losses resulting from its unlawful unilateral changes since January 20, 1995, by, inter alia, making all delinquent trust fund contributions and reimbursing the unit employees for any expenses resulting from its failure to make such contributions, with interest, as set forth in the remedy section of this decision.

(b) Offer Carl Taylor immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(c) Remove from its files any and all references to the unlawful discharge, and notify Carl Taylor in writing that this has been done.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Redlands, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 22, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with the Resilient Floor and Decorative Covering Local Union No. 1247, International Brotherhood of Painters and Allied Trades, AFL-CIO as the exclusive collective-bargaining representative of all the employees in the following unit by unilaterally changing the terms and conditions of employment, including, but not limited to, cessation of payments to various trust funds:

Included: All our employees engaged in the installation of carpeting, tile and related products as more fully set forth in the 1993-1995 collective bargaining agreement with the Union.

Excluded: All other employees, guards and supervisors as defined in the Act.

WE WILL NOT discharge employees or fail to reinstate them because they joined or assisted the Union or engaged in other protected concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of the 1993-1995 Agreement with the Union and WE WILL make the unit employees whole for any losses resulting from our unlaw-

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ful unilateral changes since January 20, 1995, by, inter alia, making all delinquent trust fund contributions and reimbursing the unit employees for any expenses ensuing from our failure to make such contributions, with interest.

WE WILL offer Carl Taylor immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges

previously enjoyed, and WE WILL make him whole, with interest, for any loss of earnings and other benefits suffered as a result of our discrimination against him.

WE WILL remove from our files any and all references to the unlawful discharge and notify Carl Taylor in writing that this has been done.

GENERAL FLOORING SYSTEMS, INC.